

JUDGE SCHINDLER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CV 8054

CELEBRITY INTERNATIONAL,
INC.

Plaintiff,

v.

CROCS, INC., AND SOCK &
ACCESSORY BRANDS GLOBAL,
INC.

Defendants.

Civil Action No.

(JURY TRIAL DEMANDED)



COMPLAINT

Plaintiff Celebrity International, Inc. ("Celebrity" or "Plaintiff") by its attorneys hereby complains of Defendants Crocs, Inc., and Sock and Accessory Brands Global, Inc. (collectively, "Defendants") as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §101 *et seq.* This Court has jurisdiction over the federal claims of this action pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1338.

2. This action arises from Defendants' use, sale, offer for sale, and/or importing of products, and conduct of activities, that infringe Plaintiff's patent.

3. Consumers in New York are able to purchase the infringing products from various websites for shipment to New York. Upon information and belief, this Court has personal jurisdiction over Defendants in that Defendants have engaged in acts constituting doing business in the State of New York, including in this judicial district and have intentionally directed their tortious activities toward the State of New York, including this judicial district. Upon information and belief, Defendants have committed acts of intellectual property infringement in New York, including this judicial district, and have delivered the accused products into the stream of commerce with the expectation that they will be purchased by consumers in the State of New York, including this judicial district. Upon information and belief, Defendants have sold products, including products that are the subject of this Complaint, to consumers in the State of New York, including this judicial district.

4. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1391(b) - (d) and 28 U.S.C. §1400(b), in that Defendants are corporations subject to personal jurisdiction within this judicial district and have committed acts of patent infringement in this judicial district.

THE PARTIES

5. Plaintiff Celebrity International, Inc. (“Celebrity”) is a corporation organized and existing under the laws of the State of New York having a principal place of business at 10 West 33rd Street, Suite 910 New York, NY 10001-3306. Celebrity is the owner of the patent that is the subject of this Complaint.

6. Upon information and belief, Defendant Crocs, Inc. is a corporation organized and existing under the laws of the State of Colorado having a principal place of business at 6273 Monarch Park Place, Suite 200 Niwot, Colorado, 80503.

7. Upon information and belief, Defendant Sock and Accessory Brands Global, Inc. is a corporation organized and existing under the laws of the State of North Carolina having a principal place of business at 5380 Highway 158 Suite 250 Advance, North Carolina 27006. Upon information and belief, Sock and Accessory Brands Global, Inc. distributes the accused product, for sale in the United States.

FACTS

PLAINTIFF’S PATENT

8. On February 12, 2013, United States Patent No. 8,371,042 (“the ‘042 patent”) entitled “Children’s Shoe” was duly and lawfully issued to Michael Matalon for his invention by the United States Patent and

Trademark Office (hereinafter the “ ‘042 patent”). A copy of the ‘042 patent is attached as Exhibit 1 hereto.

9. Celebrity is the owner of all right, title and interest in the ‘042 patent, by virtue of the assignment of patent rights.

DEFENDANTS’ INFRINGEMENT OF PLAINTIFF’S PATENT

10. During the term of the ‘042 patent, Defendants have manufactured, offered for sale, sold, used and/or imported products embodying the patented inventions of the ‘042 patent and engaged in activities which constitute direct infringement, contributory infringement and/or inducement of infringement.

11. Upon information and belief, Defendants’ infringing products include, but are not limited to, children’s shoes currently being sold under the Crocs “Grippy Socks” name. Images of an example of an infringing product marketed by Defendants are attached as Exhibit 2 hereto.

12. Defendants’ acts have been without license or authority of Plaintiff.

WILLFUL INFRINGEMENT

13. Upon information and belief, Defendants’ activities have been deliberate and willful.

14. Upon information and belief, Defendants are aware of the '042 patent, and have deliberately chosen to use, sell, and offer for sale, infringing products.

15. Defendants' actions directly infringe, contribute to infringement and/or induce infringement of the '042 patent.

16. Upon information and belief, Defendants' actions have been willful and deliberate.

17. Defendants' actions have caused and are causing irreparable damage to Plaintiff and its business.

18. Plaintiff has been extensively damaged by Defendants' bad faith activities and will continue to be damaged unless Defendants are restrained and enjoined by this Court.

19. Plaintiff has no adequate remedy at law.

20. Plaintiff has been extensively damaged by Defendants' illegal actions in an amount to be determined by a jury and this Court, including recovery and relief for Plaintiff's lost sales and lost profits.

COUNT I
PATENT INFRINGEMENT:
(35 U.S.C. §101 *et seq.*)

21. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 20 as if fully set forth herein.

22. This claim arises under 35 U.S.C. §101 *et seq.*

23. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331.

24. Defendants' acts constitute infringement of the '042 patent, under 35 U.S.C. §271.

25. Upon information and belief, Defendants' acts of infringement were and are with knowledge of the patent.

26. Defendants' acts of infringement were and are willful and deliberate.

27. Defendants have profited from their infringing activities.

28. As a result of Defendants' conduct, Plaintiff has been substantially harmed and has suffered actual damages.

DAMAGES

29. Plaintiff is being irreparably harmed by Defendants' infringing activities, and has no adequate remedy at law.

30. Plaintiff has been extensively damaged by Defendants' intellectual property infringement in an amount to be determined by a jury and this Court.

31. Plaintiff seeks damages as a result of Defendants' infringement which include, but are not limited to: Plaintiff's lost profits from Defendants' sales of products that infringe on Plaintiff's patent, but in no event less than a reasonable royalty.

32. Plaintiff requests that this honorable Court assess enhanced damages against Defendants in the fullest amount permissible by law, in view of the willful, egregious, malicious, and extensive nature of Defendants' bad faith activities complained of herein, and in view of the numerous violations, the willful nature of the violations, and the significant damage to Plaintiff, as set forth above.

JURY TRIAL DEMAND

33. Pursuant to Rule 38, Fed. R. Civ. P. Plaintiff hereby demands a trial by jury on all issues set forth herein that are properly triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court, upon final hearing of this matter, grant the following relief against Defendants:

- A. That Defendants be adjudged to have engaged in patent infringement of Plaintiff's rights under the '042 patent, under 35 U.S.C. §101 *et seq.*;
- B. That the '042 patent, is duly and legally issued by the U.S. Patent Office, and is valid and enforceable;
- C. That each of Defendants, its officers, agents, servants, employees, representatives, distributors, and all persons in concert or participation with them be enjoined pursuant to 35

U.S.C. §283 from making, using, importing, exporting, offering for sale and selling any products and activities which infringe the patent under 35 U.S.C. §271;

- D. That each of the Defendants be directed to file with this Court and serve on Plaintiff within thirty (30) days after service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which the Defendants have complied with the injunction;
- E. That each of the Defendants be required to deliver up for impoundment during the pendency of this action, and for destruction thereafter, all copies of the infringing materials in its possession or under its control and all materials, including molds and master models, used for making same;
- F. That Defendants be required to account for and pay over to Plaintiffs all damages sustained by Plaintiffs, as well as any and all of Defendant's gains, revenues, profits and advantages attributable to or derived by the acts complained of in this Complaint, including an assessment of interest on the damages so computed, and that the damages be trebled, pursuant to Section 35 of the Lanham Act, 15 U.S.C. §1117, and all other applicable law;
- G. That each such award of damages be enhanced to the maximum

available for each infringement in view of each of Defendants' willful infringement of Plaintiff's rights;

- H. That Plaintiff recover the costs of this action including its expenses and reasonable attorney's fees pursuant to 35 U.S.C. §285 and all further applicable law, because of the deliberate and willful nature of the infringing activities of Defendants sought to be enjoined hereby, which make this an exceptional case warranting such award;
- I. That Plaintiff be awarded pre-judgment and post-judgment interest;
- J. That Plaintiff obtain all further relief permitted under the laws of the United States; and,
- K. That Plaintiff obtain all such other and further relief as the Court may deem just and equitable.

Dated: November 12, 2013



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EXHIBIT 1



US008371042B2

(12) **United States Patent**
Matalon

(10) **Patent No.:** **US 8,371,042 B2**
(45) **Date of Patent:** **Feb. 12, 2013**

(54) **CHILDREN'S SHOE**

(75) Inventor: **Michael R. Matalon**, Brooklyn, NY
(US)

(73) Assignee: **Celebrity International, Inc.**, New
York, NY (US)

(*) Notice: Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 551 days.

(21) Appl. No.: **12/685,832**

(22) Filed: **Jan. 12, 2010**

(65) **Prior Publication Data**
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(51) **Int. Cl.**
A43B 1/02 (2006.01)
A43B 23/02 (2006.01)
(52) **U.S. Cl.** 36/9 R; 36/112
(58) **Field of Classification Search** 36/9 R,
36/112, 109, 45; 2/239, 240
See application file for complete search history.

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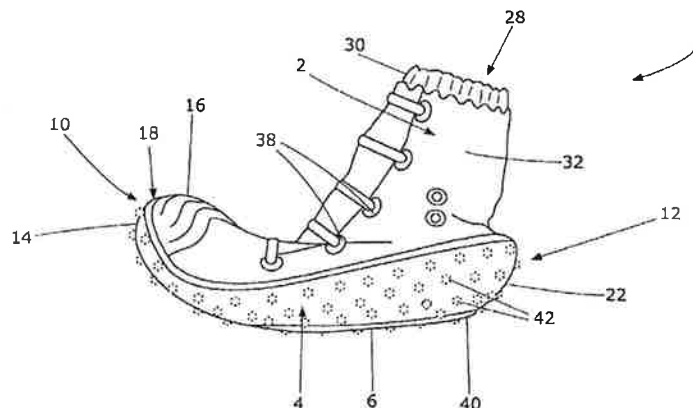
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Primary Examiner — Ted Kavanaugh
(74) *Attorney, Agent, or Firm* — Cozen O'Connor

(57) **ABSTRACT**

An article of infant footwear comprising an upper sock portion attached to a lower sole portion. The lower sole portion comprises a toe region and a heel region. A toe region, comprising a lip portion and a toe-cap, rises up from the front of the lower sole portion to surround and protect the toes of an infant's foot. The heel region comprises a heel member to protect the heel and surrounding tendons of an infant. The lower sole portion has an underside, a protruding layer, and stud protrusions providing traction, protection, and balance for an infant wearing the article of infant footwear.

19 Claims, 4 Drawing Sheets



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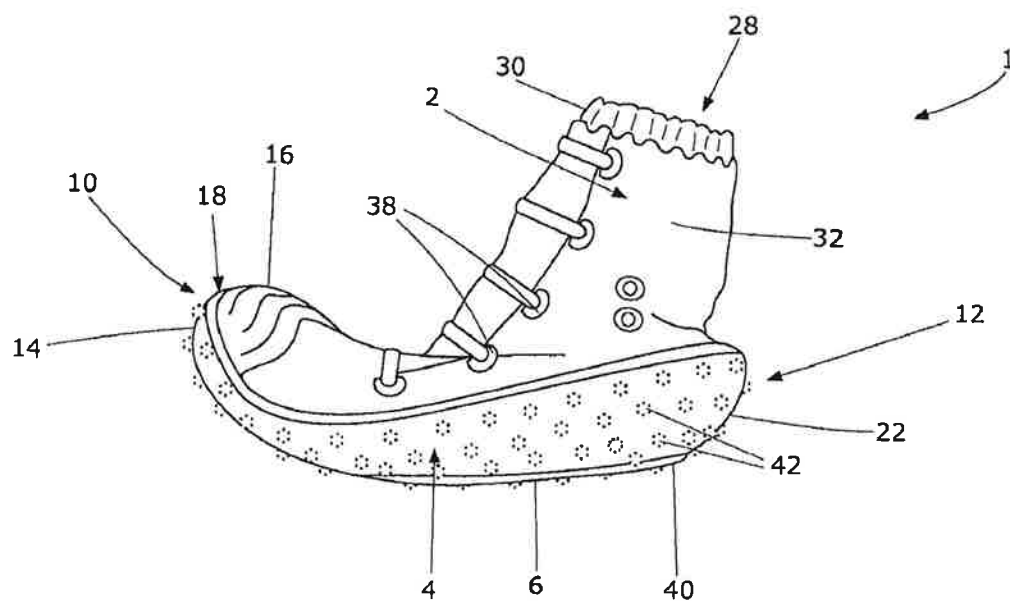
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Fig. 1



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Fig. 2

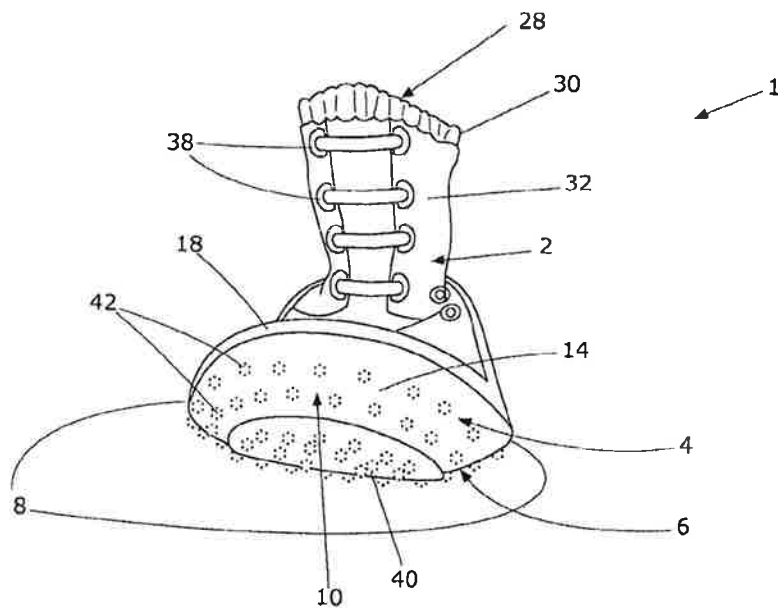


Fig. 3

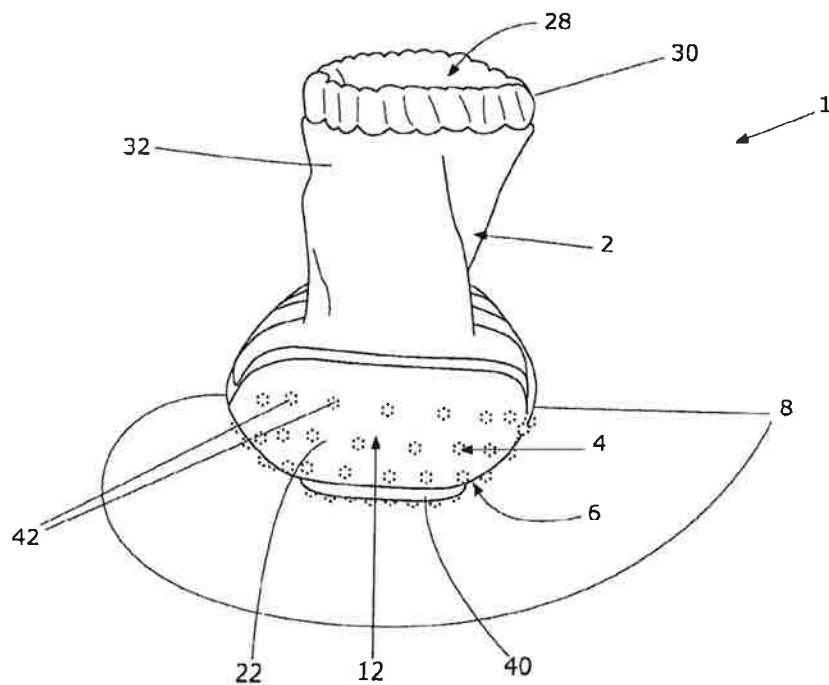


Fig. 4

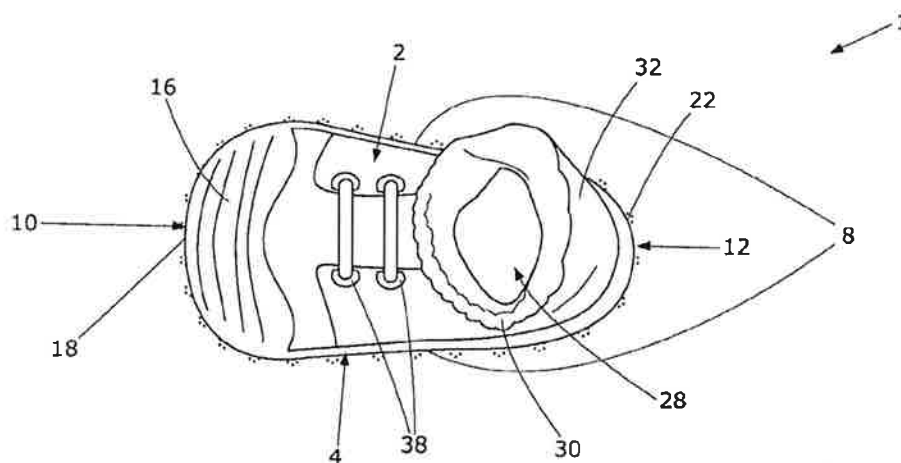
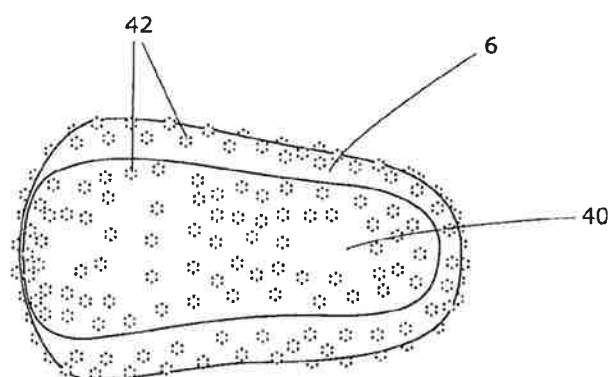


Fig. 5



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Fig. 6

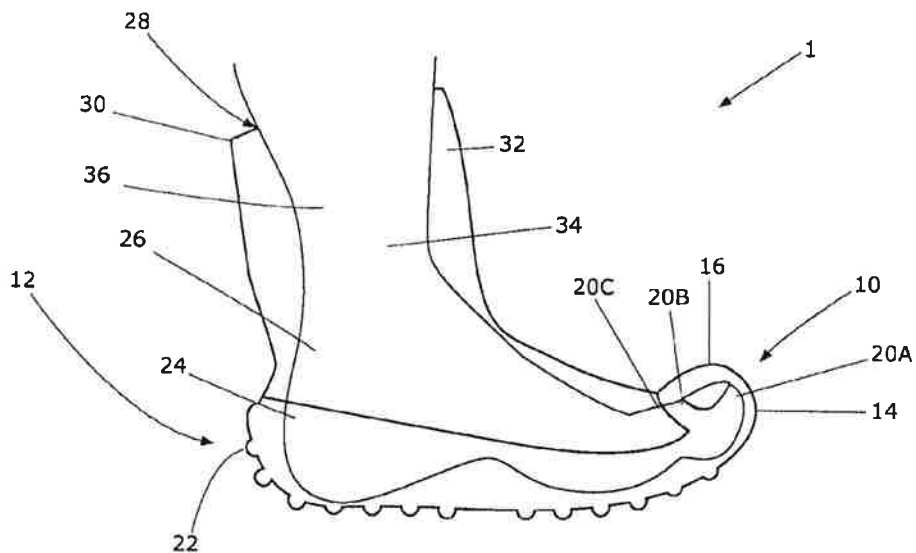
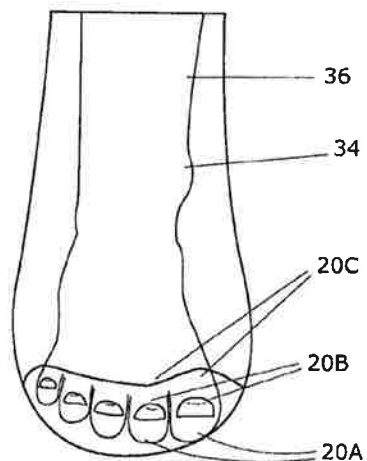


Fig. 7



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CHILDREN'S SHOE

REFERENCE TO RELATED APPLICATION

This application claims priority of U.S. Design patent application Ser. No. 29/342,955, filed on Sep. 3, 2009, which content is hereby incorporated by reference.

BACKGROUND OF THE INVENTION

The present invention relates generally to an article of footwear for infants and, in particular, to an article of footwear designed to better protect the entire toe region of an infant walking on both indoor and outdoor surfaces.

Infants need protection for their feet as they begin to learn to walk. This is especially the case for the more fragile areas of infants' feet, particularly their toes, as infants transition to walking from crawling, where they are more accustomed to applying pressure to their toes, and in different ways. As infants progress further to walking on outdoor terrain, it is desirable for infants to wear footwear that can be worn on both indoor and outdoor surfaces, and which provides the necessary stability and traction for such purposes.

There is a variety of infant sock and footwear present in the prior art. Such prior art generally fits into two categories: first, socks or other soft footwear primarily intended to be worn indoors by crawling infants, and second, more rigid outdoor footwear.

Infant socks or soft footwear in the prior art provide virtually no protection for an infant's toes, often only covering such areas with a soft sock material or the relatively soft upper portion of a shoe. They are also primarily designed for crawling infants, and, as a result, lack the necessary sole or other structure to enable infants to walk on outdoor surfaces with sufficient traction and protection. The infant socks or soft footwear in the prior art, therefore, invariably need to be replaced or covered with outdoor footwear as they are unsuitable for walking on outdoor surfaces without utilizing some variety of outer footwear. Infant outdoor footwear designs, by the same token, often also provide little protection for an infant's toes, and are also unsuitable for walking on indoor surfaces because they are either overly rigid or are damaging to, or leave behind undesired scrape residues on, more delicate indoor surfaces. Infant footwear often therefore needs to be removed when an infant walks indoors. In short, neither type of design sufficiently protects an infant's toes, nor are they capable of being utilized independently of the other as infants transition between indoor and outdoor environments.

U.S. Pat. No. 6,385,779 is an infant sock employing a rubber gripper member on the underside and around the front of the design. The objective of this design is to provide crawling infants with greater friction between their feet and indoor flooring. The referenced prior art provides no significant protection for the infants' toes, is not suitably designed for walking infants, and is impractical for infants walking on outdoor surfaces.

Although in general, the contributions of the prior art to infants' footwear needs has been satisfactory, the prior art has been found to not sufficiently protect the toes of walking infants or be practical for walking on both indoor and outdoor surfaces. It is therefore desirable to provide an article of infant footwear that better protects an infant's entire toe region, and which is specifically targeted towards walking infants, for walking on both indoor and outdoor surfaces.

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SUMMARY OF THE INVENTION

Accordingly, it is an object of the present invention to provide a new and improved article of infant footwear for walking infants that protects the entire toe region of a walking infant's foot.

It is a further object of the present invention to provide a new and improved article of infant footwear that provides improved stability and traction for infants walking on both indoor and outdoor surfaces.

Briefly, in accordance with the present invention, these and other objects are obtained by providing an article of infant footwear that primarily consists of two portions, an upper sock portion, and an attached lower sole portion.

The upper sock portion is preferably made of a fabric that is breathable, flexible, and stretchable, providing increased flexibility and comfort for an infant's foot. For example, the instant article of infant footwear can be folded, enabling easier storage, unlike more rigid footwear for walking infants.

The lower sole portion is preferably made of a soft but durable rubber. As such, it enhances the flexibility of the article of infant footwear. Designed primarily for walking infants, the article of infant footwear's lower sole portion surrounds the lower half of the article of infant footwear, and comprises an underside, two side portions, a toe region, and a heel region at the front and rear of the of the article of infant footwear respectively. The toe region comprises a lip portion and a toe-cap, which meet to form a closed end. The toe-cap is structured and arranged to cover the Distal Phalange bones, Middle Phalange bones, and preferably the Proximal Phalange bones of an infant's foot. The heel region comprises a heel portion, which is formed by the rear of the lower sole portion rising from the underside, and is preferably structured and arranged to cover and protect the Calcaneus bone and the lower extremity of the Calcaneus (Achilles) Tendon of an infant's foot. The two side portions are molded around the lateral sides of the article of infant footwear and connect the toe region to the heel region. Protection for these areas of an infant's foot, particularly the toes, is especially important during the early stages of an infant's walking development.

A plurality of stud protrusions preferably cover the entire lower sole portion of the article of infant footwear, except for the toe-cap. The stud protrusions are intended to provide increased traction for walking on indoor and outdoor surfaces. The stud protrusions are preferably made of the same flexible rubber as the lower sole portion to provide improved traction against different types of surfaces without damaging or leaving undesired scrape residues on such surfaces. The underside of the lower sole portion possesses additional improved stabilizing features, including a protruding layer in the shape of the underside of the lower sole portion to provide greater stability. The protruding layer features stud protrusions positioned at shorter distances from each other than is evident on the remainder of the lower sole portion, giving even greater traction and stability to walking infants applying pressure in different directions as they walk. An insole is located inside the article of infant footwear to provide additional stability and comfort.

The present invention is a novel improvement over the prior art because while the prior art teaches many different varieties of socks and footwear for infants, none of the prior art teaches an article of infant footwear offering sufficient protection for the entire toe region of walking infants in the form of a raised lip portion and toe-cap, and furthermore none of the prior art teaches an article of infant footwear offering such protection coupled with the increased flexibility, stabil-

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ity and traction necessary for the relative requirements of walking on indoor and outdoor surfaces.

BRIEF DESCRIPTION OF THE DRAWINGS

The above, as well as other advantages of the present invention, will become readily apparent to those skilled in the art from the following detailed description of a preferred, embodiment when considered in the light of the accompanying drawings in which:

FIG. 1 is a side view of an article of infant footwear in accordance with the present invention;

FIG. 2 is a front view of the article of infant footwear shown in FIG. 1;

FIG. 3 is a rear view of the article of infant footwear shown in FIGS. 1 and 2;

FIG. 4 is a top plan view of the article of infant footwear shown in FIGS. 1, 2 and 3;

FIG. 5 is a bottom plan view of the article of infant footwear shown in FIGS. 1, 2, 3 and 4;

FIG. 6 is a side elevation view of an article of infant footwear in accordance with the present invention with a foot visible therein; and

FIG. 7 is a front view of an article of infant footwear in accordance with the present invention with a foot visible therein.

A more complete appreciation of the invention and many of the attendant advantages thereof will be understood by reference to the following detailed description when considered in conjunction with the accompanying drawings.

DESCRIPTION OF THE PREFERRED EMBODIMENT

Referring now to the drawings wherein like reference numerals designate identical or corresponding parts throughout the several views, an article of infant footwear according to the present invention, generally indicated at 1, comprises an upper sock portion 2 attached to a lower sole portion 4. The upper sock portion 2 is preferably made of a natural and stretchable fabric material, such as cotton, polyester, nylon, or a synthetic stretchable fabric material, such as Lycra® (E. I. du Pont de Nemours and Co., 1007 Market Street, Wilmington, Del. 19898) or spandex. In the illustrated embodiment, the lower sole portion 4 is made of rubber, but could also be made of leather, or any other flexible and wear-resistant material. The rubber lower sole portion 4 is preferably made by injection molding, though other techniques could be used. The lower sole portion 4 is structured and arranged to provide the greatest possible traction and stability for the infant wearing the article of infant footwear.

The upper sock portion 2 and lower sole portion 4 may be stitched, glued, or integrally molded together. The lower sole portion 4 comprises an underside 6, two side portions 8, a toe region 10, and a heel region 12 at the front and rear respectively of the lower sole portion 4. The toe region 10 comprises a lip portion 14, and a toe-cap 16, which meet to form a closed end 18. Referring to FIGS. 6 and 7, the front of the lower sole portion 4 rises from the underside to form the lip portion 14, which is structured and arranged to cover the front of the Distal Phalange bone portions 20(A) of all of the toes of the child's foot. As shown in FIGS. 6 and 7, the lip portion 14 is joined to the toe-cap 16, which retreats from where it joins with the lip portion 14 to progressively cover additional areas of all of the toes of the walking infant, including the Distal Phalange bone portion 20(A), Middle Phalange bone portion 20(B), and preferably, depending on the size of an infant's

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toes, the Proximal Phalange bone portion 20(C) of an infant's toes (all shown generally in FIG. 7). The heel region 12 comprises a heel portion 22, which is formed by the rear of the lower sole portion 4 rising from the underside 6, and is preferably structured and arranged to cover the Calcaneus bone portion 24 of an infant's foot, and the portion of the foot containing the lower extremity of the Calcaneus (Achilles) Tendon 26. The two side portions 8 of the lower sole portion 4 are molded around the lateral sides of the article of infant footwear and connect toe region 10 to the heel region 12.

The upper sock portion comprises an open end 28. The open end comprises a rim 30 and a sleeve 32, which are structured and arranged to receive and grip the ankle region 34 of an infant's foot. The rim 30 contains elastic and has a diameter that is less than the diameter of the sleeve 32 and the remainder of the upper sock portion 2 for grasping and securing an infant's foot. The upper sock portion 2 is sized to cover an infant's ankle region 34 and the lower extremities of the Fibula and Tibia bone portions 36 of an infant's lower leg.

The upper sock portion 2 may have graphics printed thereon to mimic the appearance of a shoe. Specifically, the upper sock portion 2 comprises images 38 of features of the upper portion of a sneaker, including, preferably, laces, lace holes and compartments, and other stitching components found on sneakers to add to the aesthetics of the article of infant footwear.

The underside 6 of the lower sole portion 4 includes a protruding layer 40, generally following the same shape as the underside 6, but which is smaller in size than the underside 6, and which is preferably also made of rubber. The entire lower sole portion 4, except for the toe-cap 14, also includes a plurality of stud protrusions 42, preferably made of the same rubber as the lower sole portion 4, providing greater traction and stability for an infant wearing the article of infant footwear 1. The stud protrusions 42 are closer to each other on the protruding layer 40, as shown in FIGS. 2, 3 and 5, than on the remainder of the lower sole portion 4, namely the lip portion 12, underside 6, two side portions 8 and heel portion 24. The toe-cap 14 does not feature the stud protrusions 42 as it is not necessary for a walking infant to make contact with the ground using the toe-cap 14. An insole 44 is located inside the article of footwear to provide additional stability and support.

Obviously, numerous modifications and variations of the present invention are possible in the light of the above teachings. It is therefore to be understood that within the scope of the appended claims the invention may be practiced otherwise than as specifically described therein.

What is claimed is:

1. An article of children's footwear for walking infants, comprising:
 - an upper sock portion sized to fit the foot of a walking infant, said sock portion formed of a fabric material,
 - a lower sole portion formed of a rubber material attached to said upper sock portion, said lower sole portion comprising an underside, two side portions, a heel region and a toe region;
 - said toe region of said lower sole portion including a lip portion which rises from a front of the underside of said lower sole portion and structured and arranged to cover the front of all of the toes of a foot of a walking infant and a toe-cap extending from said lip portion structured and arranged to cover the top of all of the toes of a foot of a walking infant, and
 - wherein said lip portion and toe-cap are structured and arranged to surround and protect all of the toes of a foot of a walking infant and,

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wherein said lower sole portion provides traction against and protection from the ground and balance for a walking infant wearing said article of footwear, wherein said underside comprises a protruding layer having the same shape of the lower sole portion, and being smaller in size than said lower sole portion, to stabilize a walking infant wearing said article of footwear.

2. The article of footwear according to claim 1, wherein said lip portion and toe-cap are joined to said upper sock portion to form a closed end.

3. The article of footwear according to claim 1, wherein said toe-cap is structured and arranged to cover the top of the Distal, Middle, and Proximal Phalange bones of a walking infant.

4. The article of footwear according to claim 1, wherein said heel region comprises a heel portion rising from the rear of said lower sole member.

5. The article of footwear according to claim 4, wherein said heel portion is structured and arranged to cover the Calcaneus bone and the start of the Calcaneus (Achilles) Tendon of a walking infant.

6. The article of footwear according to claim 1, wherein said upper sock portion comprises a stretchable fabric.

7. The article of footwear according to claim 1, wherein said two side portions of said lower sole portion connect said toe region with said heel region.

8. The article of footwear according to claim 1, wherein said upper sock portion comprises an open end.

9. The article of footwear according to claim 8, wherein said said open end is structured and arranged to receive the foot of a walking infant.

10. The article of footwear according to claim 1, wherein said upper sock portion comprises a rim and a sleeve.

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11. The article of footwear according to claim 10, wherein said rim has a diameter less than that of said sleeve to receive and grip the ankle region of a walking infant.

12. The article of footwear according to claim 1, wherein said upper sock portion further comprises printed graphics to mimic the appearance of a shoe.

13. The article of footwear according to claim 1, wherein said upper sock portion is stitched to said lower sole portion.

14. The article of footwear according to claim 1, wherein said upper sock portion is attached to said lower sole portion with glue.

15. The article of footwear according to claim 1, wherein said upper sock portion is integrally molded to said lower sole portion.

16. The article of footwear according to claim 1, wherein said lower sole portion further comprises a plurality of spaced-apart stud protrusions covering the entirety of said lower sole portion.

17. The article of footwear according to claim 16, wherein said stud protrusions are made of rubber to provide traction against the ground.

18. The article of footwear according to claim 16, wherein said stud protrusions on said underside are spaced-apart from each other at a smaller distance than said stud protrusions located on the remainder of said lower sole portion, providing greater traction and stability.

19. The article of footwear according to claim 1, further comprising an insole positioned inside said article of footwear, said insole having the shape of the inside of said article of footwear.

* * * * *

EXHIBIT 2





1 pair grippy socks

1-2 years

made in china

4-6 shoe size

designed in USA



crocs™



78%Nylon 18%Polyester
3%spandex 2%Rubber

Machine wash warm with
like colors. Use only
non-chlorine bleach when
needed. Drip dry.

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